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Case No. _____

IN THE UNITED STATES SUPREME COURT

STATE OF FLORIDA,

Petitioner,

v.

ROBERT A. THOMAS,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

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QUESTION PRESENTED

WHETHER THE DECISION OF THE FLORIDA SUPREME COURT HOLDING THAT THE ABILITY TO CONDUCT A SEARCH INCIDENT TO AN ARREST OF A RECENT OCCUPANT OF A MOTOR VEHICLE IS CONDITIONED UPON A LAW ENFORCEMENT OFFICER "INITIATING CONTACT" WITH THE DEFENDANT CONFLICTS WITH NEW YORK v. BELTON AND DECISIONS OF A MAJORITY OF FEDERAL AND STATE APPELLATE COURTS.

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OPINION BELOW

The decision from which Petitioner seeks to invoke the discretionary review of this Court is reported as Thomas v. State, __ So.2d __ (Fla. 1999), 1999 WL 1894291 (Fla).

Petitioner's Appendix contains the opinion of the Florida Supreme Court below, Case No. SC93070, (A 1-12), as well as the court's order denying rehearing. (A 13-14). The appendix further contains the opinion of the Florida Second District Court of Appeal, State v. Thomas, 711 So.2d 1241 (Fla. 2nd DCA 1998). (A 15-19). The parties will be referred to as they appear before this Court or as they stood in the court(s) below.[1]

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[1] The symbol "A" followed by the appropriate page number expresses a citation to the materials contained in the Appendix to this pleading.

JURISDICTION

The decision below was entered on October 14, 1999. Petitioner's Motion for Rehearing was denied June 8, 2000, in light of a revised opinion entered that date. This Court has jurisdiction pursuant to 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Petitioner contends that the following amendments to the United States Constitution are involved:

The Fourth Amendment of the United States Constitution provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrant shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

The Fourth Amendment is applicable to the states through the Fourteenth Amendment of the United States Constitution which provides in pertinent part:

> Section 1. No State shall...deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Article I, § 12 of the Florida Constitution provides in pertinent part:

> Searches and seizures. - This right shall be construed in conformity with the 4th Amendment to the United States Constitution, as interpreted by the United States Supreme

Court. Articles or information obtained in violation of this right shall not be admissible in evidence if such articles or information would be inadmissible under decisions of the United States Supreme Court construing the 4th Amendment to the United States Constitution.

STATEMENT OF THE CASE

The material facts, as set out by the Florida Supreme Court in the body of its decision are as follows:

> On the evening in question, Robert Thomas entered the driveway of a residential home in which police were already present making arrests for narcotics offenses. While the detectives were in the residence, Officer Maney waited outside the residence in his patrol car. Officer Maney observed Thomas drive up to the house, park his car in the driveway, and get out of the vehicle. Upon exiting, Thomas walked to the rear of his vehicle, where Officer Maney met him and asked him his name and whether he had a driver's license. A check of Thomas's driver's license revealed an outstanding warrant for a probation violation. Officer Maney arrested Thomas and took him inside the residence. Officer Maney originally was unaware that there were narcotics in Thomas's car. However, a subsequent search after Thomas's arrest resulted in the discovery of a plastic bag containing white residue on the bottom of the driver's side door and three small bags of a white substance in the glove box. All of the bags tested positive for methamphetamine. Five minutes elapsed between the time Thomas exited his car, was placed under arrest, and was brought into the residence and Officer Maney's subsequent search of the vehicle.

The Florida Supreme Court next recited a brief summary of the prior proceedings in this case:

Following a hearing, the trial court granted Thomas's motion to suppress based on State v. Howard, 538 So. 2d 1279 (Fla. 5th DCA 1989). The district court reversed, relying on New York v. Belton, 433 U.S. 454 (1981), and held that because the search of the vehicle was not under a preplanned pretext to conduct a warrantless search, the search was lawful because it was incident to the valid arrest of Thomas. See Thomas, 711 So. 2d at 1243. (A 1-2, footnotes deleted)

The Florida Supreme Court held that on these facts the District Court's opinion was in error and adopted a position which places a limitation on the bright-line rule set forth by this Court in New York v. Belton, 433 U.S. 454 (1981), to wit: Belton "is limited to situations where the law enforcement officer initiates contact with the defendant...." (A 10) The Florida Supreme Court determined that because the defendant in this case did not exit his vehicle upon the direction of the law enforcement officer Belton did not apply. (A 10)

REASONS FOR GRANTING THE WRIT

THE DECISION OF THE FLORIDA SUPREME COURT IS IN DIRECT CONFLICT WITH THIS COURT'S DECISION IN NEW YORK v. BELTON AND WITH A MAJORITY OF FEDERAL AND STATE APPELLATE COURTS, BY LIMITING A SEARCH INCIDENT TO A VALID ARREST TO SCENARIOS WHERE THE LAW ENFORCEMENT OFFICER INITIATES CONTACT WITH THE ARRESTEE. THEREFORE, THIS COURT SHOULD ACCEPT JURISDICTION TO RESOLVE THIS CONFLICT.

In New York v. Belton, 453 U.S. 454 (1981), the Court determined that "... when a policeman has made a lawful custodial arrest of the occupant of an automobile, he may, as a contemporaneous incident of that arrest, search the passenger compartment of that automobile." Belton, 453 U.S. at 460. Thus, there should be no debate as to what is the triggering mechanism of a valid search of a vehicle incident to an arrest -- **it is the arrest itself**. See, United States v. Robinson, 414 U.S. 218, 235 (1973) ("It is the fact of the lawful arrest which establishes the authority to search").

The Court accordingly established a bright-line rule that is to be applied in a simple and straightforward fashion. The Florida Supreme Court *sub judice* misapprehends the nature and scope of the bright-line rule announced in Belton. The Florida Supreme Court determined that the Belton bright-line rule does not extend to a situation where the first contact the defendant has with the officer occurs after the defendant has exited the vehicle of his own accord: "Belton's bright-line rule is limited to situations where the law enforcement officer initiates contact with the defendant, either by actually confronting the defendant or by signaling confrontation with the defendant, and the officer subsequently arrests the defendant regardless of whether the defendant has been removed from or has exited the automobile. " (A 10) The opinion below unjustifiably adopts a rationale which is contrary to the reasoning of Belton, which blurs, if not erodes, the bright-line rule established by Belton.

Relying on United States v. Hudgins, 52 F. 3d 115, 119 (6th Circuit 1995), as persuasive, the court quoted Hudgins:

> ...However where a defendant has voluntarily exited the automobile and begun walking away from the automobile before the officer has initiated contact with him, the case does not fall within Belton's bright-line rule, and a case by case analysis of the reasonableness of the search under Chimel becomes necessary.

(A 9). The holdings of the Florida Supreme Court and the Sixth Circuit have resulted in an unreasonable limitation of Belton.

Examples of better decisions adopting the Belton bright-line test and reflecting a more reasonable and sound approach are United States v. Snook, 88 F.3d (8th Cir. 1996); United States v. Franco, 981 F.2d 470 (10th Cir. 1992); and United States v. Arango, 879 F.2d 1501 (7th Cir. 1989).

In United States v. Snook, 88 F. 3d 605 (8th Cir. 1996), the court affirmed the search of the defendant's automobile under Belton. The court upheld the search incident to arrest. "The fact that Snook had just stepped out of his vehicle as the officer arrived and before his arrest does not alter his status as an "occupant" of the vehicle." Snook, 88 F. 3d at 608. As in the present case, the defense argued that Belton did not apply since the defendant had just stepped out of the car and was not an occupant at the time of his arrest. The Eighth Circuit explicitly rejected this argument and determined that although Snook stepped out of the vehicle of his own accord, he was an occupant for purposes of Belton.

Similarly, in United States v. Franco, 981 F. 2d 470 (10th Cir. 1992), the court upheld the search incident to arrest. Such a search is permissible notwithstanding the fact that the arrestee is out of the automobile and under the control of the officer. (citations omitted). Mr. Franco was a recent occupant of his vehicle and the arrest was made in close proximity to his vehicle." Franco, 981 F. 2d at 473. In reviewing the policies considerations behind Belton, the Court further determined "the law does not require the arresting officer to mentally sift through all these possibilities during an arrest, before deciding whether he may lawfully search within the vehicle." Franco, 981 F. 2d at 473.

In United States v. Arango, 879 F. 2d 1501 (7th Cir. 1989), the defense argued the search incident to arrest was not valid since he was approximately a block from the scene of the crime at the time of his arrest. The court rejected this argument and found the search was consistent with Belton in order to protect persons and evidence. The court relied on United States v. Cotton, 751 F.2d 1146, 1148 (10th Cir.1985), quoted in United States v. Karlin, 852 F.2d 968, 970 (7th Cir.1988), and held the law:

> does not require the arresting officer to undergo a detailed analysis, at the time of arrest, of whether the arrestee, handcuffed or not, could reach into the car to seize some item within, either as a weapon or to destroy evidence, or for some altogether different reason. The facts surrounding each arrest are unique, and it is not by any means inconceivable under those various possibilities that an arrestee could gain control of some item within the automobile. The law simply does not require the arresting officer to mentally sift through all these possibilities during an arrest, before deciding whether he may lawfully search within the vehicle.

To require a police officer to make instantaneous legal determinations undermines the policy behind Belton and does not further "the Court's preference for a straightforward rule for guidance of police officers and avoidance of hindsight determinations in litigation." Karlin, 852 F.2d at 971.

The split in the federal circuits is apparent when looking at the above decisions in contrast to the holding in Hudgins, supra, United States v. Strahan,984 F. 2d 155 (6th Cir. 1993) and other cases, for example. In Strahan, the court determined that Strahan was approximately thirty feet from his vehicle when arrested. The court determined Strahan was not an occupant of the vehicle and Chimel, not Belton, governed. Similarly in United States v. Fafowora, 865 F. 2d 360 (D.C. Cir. 1989), the court held the search incident to arrest was improper since the defendants were walking away from their Jeep and the contact occurred well outside of the car. The

court reasoned that where the police come upon an arrestee outside of an automobile, no bright line rule is required. Instead the Chimel analysis applies.[2]

This case by case analysis in which one must determine the intent of the arrestee upon his exiting of the vehicle is a practical impossibility that leads to inconsistent police enforcement and inconsistent legal analysis by inferior courts. The Court, in Belton, acknowledged same and discussed the need for a bright line rule, citing Dunaway v. New York, 442 U.S. 200 (1979): "In short, [a] single, familiar standard is essential to guide police officers, who have only limited time and expertise to reflect on and balance the social and individual interests involved in the specific circumstances they confront. (cite omitted)."

Moreover, a cursory review of state appellate court decisions also reveals a split of authority. Some jurisdictions have held, in conformity with the Florida decision at bar, that an arrestee is a "recent occupant" of a vehicle only where the law enforcement officer initiates contact with the defendant while the defendant is inside the automobile. See, e.g., People v. Fernengel, 216 Mich.App. 420, 549 N.W.2d 361 (1996); Commonwealth v. Santiago, 410 Mass. 737, 575 N.E.2d 350 (1991). Contrarily, other jurisdictions have determined that a "recent occupant" of a vehicle is such whether a law enforcement officer initiates the contact with the arrestee. See, e.g., Glasco v. Commonwealth, 257 Va. 433, 513 S.E.2d 137 (1999); People v. Bosnak, 262 Ill.App.3d 122, 199 Ill.Dec. 331, 633 N.E.2d 1322 (1994). It is submitted that this latter view is consistent with the reasoning of Belton clearly is more

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[2] Interestingly, the opinion of United States v. Tobon-Sierra, 954 F. Supp. 73 (S.D. N.Y. 1997), demonstrates the internal conflict in the federal system. The court acknowledged that several circuits have approved the search of a vehicle under Belton when a defendant was a recent occupant, and was arrested near the car. These circuits did not require any finding that the defendant was motivated to leave the vehicle due to the approach of law enforcement. The court distinguished the cases cited by the defense in Tobon-Sierra which relied upon a contact being initiated by police. The court declined to reach that issue since the defendant exited the vehicle in response to police contact.

sound, and conflicts with the minority view exemplified by the case *sub judice*.

The Belton bright-line rule exists so that a police officer can appreciate the factors he deals with and consistently apply the rules to circumstances he encounters. "The protection of the Fourth and Fourteenth Amendments can only be realized if the police are acting under a set of rules which, in most instances, makes it possible to reach a correct determination beforehand as to whether an invasion of privacy is justified in the interest of law enforcement." Belton, 101 S. Ct. at 2863. To now hold that a police officer's ability to effect a lawful search of the vehicle of an arrested recent occupant of that vehicle is dependent upon whether it happens to be the citizen/defendant or the police officer who makes first contact is illogical and certainly not contemplated by Belton.

Because arrest alone triggers a Belton search, reliance by the Florida Supreme Court on Knowles v. Iowa, __ U.S. __, 119 S.Ct. 484 (1998), is misplaced. There was no arrest in the Knowles case, merely the issuance of a traffic citation.[3] This Court determined that the two rationales relied upon to support a search incident to an arrest, officer safety and the need to preserve evidence, are either not present to the same extent or are not present at all in citation issuance situations as opposed to custodial arrest situations. But these rationales **are present**

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[3] Moreover, Knowles was a very limited factual scenario restricted to a particular Iowa statute, which allows the "issuance of a citation in lieu of an arrest 'does not affect the officer's authority to conduct an otherwise lawful search.' The Iowa Supreme Court has interpreted this provision as providing authority to officers to conduct a full-blown search of an automobile and driver in those cases where police elect not to make a custodial arrest and instead issue a citation--that is, a search incident to a citation." (Cites omitted). The Court did not conclude that Knowles fell outside the Belton umbrella, rather this Court held that in this "routine traffic stop" the minimal additional intrusion of ordering a driver out of his car for officer safety might be justified, but that the "considerably greater intrusion attending a full field- type search" was not. Clearly the Court in Knowles faced a completely different circumstance than presented to the court herein.

in every custodial arrest situation. That is why the facts surrounding a custodial arrest (such as who initiated contact with whom) are "irrelevant" in applying the Belton bright-line rule. If a valid custodial arrest of a recent occupant of a motor vehicle has been effected, a search of that vehicle incident to that arrest may be undertaken. Stated otherwise, the issuance of a citation (as in Knowles) is not the functional equivalent of a custodial arrest (as in Belton and as in the instant case), and as between the two, **only the arrest can trigger a search of a recently occupied vehicle.** Knowles does not and can not control the instant case -- Belton clearly does.[4]

In effect, the Florida Supreme Court has corrupted any bright line rule in Belton and has made "any" application dependent upon the particular facts of each particular case.[5]

In the instant case, Thomas was **lawfully arrested** based upon an outstanding warrant for a probation violation. It is of no moment what transpired factually prior to the valid arrest -- **the lawful arrest in and of itself triggers application of the Belton rule**, and the ensuing search of the vehicle incident to that lawful arrest was constitutionally permissible and reasonable. There is no need to inquire further as to whether there was additional support for the authority of the search, such as whether there was a danger to the officer or whether there was a need to preserve evidence. In United States v. Robinson, supra, this Court rejected the need for a case-by-case examination of the reasons supporting the authority for a search -- the lawful arrest itself is all the support needed. Robinson, 414 U.S. at 235.

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[4] The Florida Supreme Court, in applying Knowles to Belton, observed: ". . . [H]ence, it can be inferred that the bright line rule does not apply, as clarified by Knowles, when its application has been extended to a situation not contemplated by the Supreme Court in Belton. Rather, the Chimel factors of threat to officer safety or the necessity of preservation of evidence must be present to validate the search." (A-7).

[5] Article I, Section 12 of the Florida Constitution specifies that the right of the people to be free from unreasonable searches and seizures is to be construed in conformity with the Fourth Amendment of the United States Constitution as interpreted by the Supreme Court of the United States.

Creation of the "who initiated contact" distinction has resulted in the establishment of conflict amongst several federal circuits and state appellate courts. To prevent this conflict from further hindering the policeman in the street as he attempts to do his duty, this Court should grant certiorari, decide the issue adverse to the Florida Supreme Court's holding and reverse the decision of the Florida Supreme Court.

CONCLUSION

The decision of the Florida Supreme Court below is in conflict with well established Fourth Amendment law as set down in decisions of this Court as well as decisions of other federal and state appellate courts. Because of this conflict, Respondent respectfully requests this Court to grant the petition for writ of certiorari.

Respectfully submitted,

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No. 93,070

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vs.

STATE OF FLORIDA,

Respondent.

[October 14, 1999]

REVISED OPINION

HARDING, C.J.

We have for review State v. Thomas, 711 So. 2d 1241 (Fla. 2d DCA 1998), which expressly and directly conflicts with the opinion in State v. Howard, 538 So. 2d 1279 (Fla. 5th DCA 1989). We have jurisdiction pursuant to article V, section 3(b)(3) of the Florida Constitution. For the reasons expressed below, we quash the decision of the Second District Court of Appeal in Thomas.

The facts of Thomas are as follows. On the evening in question, Robert Thomas entered the driveway of a residential

home in which police were already present making arrests for narcotics offenses. While the detectives were in the residence, Officer Maney waited outside the residence in his patrol car. Officer Maney observed Thomas drive up to the house, park his car in the driveway, and get out of the vehicle. Upon exiting, Thomas walked to the rear of his vehicle, where Officer Maney met him and asked him his name and whether he had a driver's license. A check of Thomas's driver's license revealed an outstanding warrant for a probation violation. Officer Maney arrested Thomas and took him inside the residence. Officer Maney originally was unaware that there were narcotics in Thomas's car. However, a subsequent search after Thomas's arrest resulted in the discovery of a plastic bag containing white residue on the bottom of the driver's side door and three small bags of a white substance in the glove box. All of the bags tested positive for methamphetamine. Five minutes elapsed between the time Thomas exited his car, was placed under arrest, and was brought into the residence and Officer Maney's subsequent search of the vehicle.

Following a hearing, the trial court granted Thomas's motion to suppress based on State v. Howard, 538 So. 2d 1279 (Fla. 5th DCA 1989). The district court reversed, relying on New York v. Belton, 433 U.S. 454 (1981), and held that because the search of the vehicle was not under a preplanned pretext to conduct a warrantless search, the search was lawful because it was incident to the valid arrest of Thomas. See Thomas, 711 So. 2d at 1243.

In Howard, the defendant was followed by a police officer who had knowledge of an outstanding warrant for his arrest for a probation violation. Howard drove into the parking lot of a convenience store, and upon exiting his car with a pouch in his hand, he spotted the officer and placed the pouch back into his car and locked the door. After Howard was

arrested on the warrant, he then instructed his brother who was present at the scene not to allow the police to search his car. However, the officer took the keys from Howard's pocket and searched the vehicle and found contraband.

The trial court suppressed the evidence and the district court affirmed. The district court held that the officer did not have probable cause for a warrantless search of the car. The district court stressed that Howard had already exited his car and locked it. The district court stated that even though the officer's suspicions may have justifiably been aroused, there was no legitimate need or reason to search Howard's car as incident to his valid arrest. See Howard, 538 So. 2d at 1280.

The district court in Thomas distinguished Howard based on the fact that the officer in Howard was in reality conducting a preplanned warrantless search, whereas in Thomas the officer did not know Thomas, nor was he aware of the fact that there was an outstanding warrant for his arrest. In reaching its decision, the district court in Thomas relied on Belton's bright-line rule regarding searches incident to arrests: "[W]e hold that when a policeman has made a lawful custodial arrest of the occupant of an automobile, he may, as a contemporaneous incident of that arrest, search the passenger compartment of that automobile." New York v. Belton, 453 U.S. 454, 460 (1981) (footnote omitted). While we do not question the practicality of this bright-line test, nor its application to arrests that are initiated by the conduct of an officer, we believe there must be a distinction drawn when an individual voluntarily exits his car without provocation from law enforcement personnel and without knowledge of their presence.

In Belton, a New York State policeman was passed by another automobile driving at an excessive rate of speed. The

officer gave chase, overtook the speeding vehicle, and ordered its driver to pull over to the side of the road and stop. After comparing the vehicle registration to the driver's licenses of the driver and the three passengers, one of whom was Belton, the officer discovered that none of the men owned the car, nor were they related to the owner. In the course of verifying their identification, the officer smelled marijuana emanating from the vehicle, and also saw an envelope marked "Supergold" on the floor of the car, which he associated with marijuana. The officer then directed the men to get out of the car and placed them under arrest for unlawful possession of marijuana. He opened the envelope, which contained marijuana, searched the passenger compartment, and found cocaine in a pocket of a leather jacket found in the car.

The United States Supreme Court in Belton referred to Chimel v. California, 395 U.S. 752 (1969), for the proposition that a lawful custodial arrest justifies a contemporaneous search of an individual without a search warrant. The Court in Chimel concluded that such searches were necessary to (1) remove any weapons that the arrestee might have and (2) prevent the concealment or destruction of evidence. Relying on this reasoning, the Court in Belton held that when an officer has made a lawful arrest of the occupant of a vehicle, he may search the passenger compartment of that vehicle as long as it is in within the narrow time frame incident to the arrest. The Court did not state that the Chimel factors must be established before the vehicle can be searched; rather, the Court set up a bright-line rule to be applied in all cases. Florida's district courts have consistently applied this bright-line principle to analogous situations. See Shaw v. State, 449 So. 2d 976 (Fla. 1st DCA 1984) (affirming denial of motion to suppress, even though defendant was handcuffed and placed in the officer's vehicle before the search was conducted); Chapas v. State, 404 So. 2d 1102 (Fla. 2d DCA 1981) (upholding Belton search after

defendant was ordered out of the car, arrested for driving while intoxicated, and placed in a police vehicle); State v. Valdes, 423 So. 2d 944 (Fla. 3d DCA 1982) (holding the search of vehicle justified as a contemporaneous incident of the lawful arrest of defendant, notwithstanding that defendant was removed from the vehicle and placed in a nearby police cruiser); State v. Saufley, 574 So. 2d 1207 (Fla. 5th DCA 1991) (upholding Belton search where defendant was pursued by an officer with siren on and lights flashing, arrested for driving under the influence, and placed in a patrol car, and two to three minutes later the officer searched the vehicle); see also United States v. White, 871 F.2d 41 (6th Cir. 1989) (holding that Belton governs when an arrestee is removed from the car prior to the time of search); United States v. Karlin, 852 F.2d 968, 971-72 (7th Cir. 1988); United States v. Cotton, 751 F.2d 1146, 1149 (10th Cir. 1985); United States v. McCrady, 774 F.2d 868, 871-72 (8th Cir. 1985).

However, when searches occur beyond the scope of Belton's bright-line intent, the factors in Chimel of officer safety and evidence preservation must be present in order for a search incident to arrest to be lawful. The Supreme Court addressed the parameters of Belton's application in Knowles v. Iowa, 525 U. S. 113 (1998). In Knowles, the defendant was only issued a traffic citation, and was not placed under arrest. Chief Justice Rehnquist, writing for the Court, held that a full search of an automobile pursuant to issuance of a citation for speeding violated the Fourth Amendment. The Court declared:

> Here we are asked to extend that "bright-line rule" to a situation where the concern for officer safety is not present to the same extent and the concern for the destruction or loss of evidence is not present at all. We decline to do so.

Id. at 118-19. Not finding the circumstances to be analogous to the circumstances that were the foundation to the Belton decision, the Court declined to apply the bright-line test. Id.

In examining the application and limitations of Belton, we believe the Second District Court of Appeal in Chapas was correct in interpreting Belton as "establishing a rule applicable to all cases involving the arrest of a recent occupant of an automobile." See Chapas, 404 So. 2d at 1104. However, the court in Chapas also stated that "[i]n this case, as in the Belton case, appellant was the occupant of an automobile who had been removed from the vehicle and placed under arrest." Id. at 1104-05. The district court compared the facts of its case to Belton, found the circumstances to be analogous, and therefore applied the bright-line rule. Hence, it can be inferred that the bright-line rule does not apply, as clarified by Knowles, when its application has been extended to a situation not contemplated by the Supreme Court in Belton. Rather, the Chimel factors of threat to officer safety or the necessity of preservation of evidence must be present to validate the search.

In State v. Vanderhorst, 419 So. 2d 762 (Fla. 1st DCA 1982), the defendant was arrested for being intoxicated, and a subsequent search of his car revealed four quaaludes. The confrontation with the officer and the subsequent arrest and search were two-and-one-half hours after defendant's vehicle got stuck in the mud. The district court stated:

> Because Belton incorporated within its opinion that language from Chimel limiting the scope of an officer's search which is reasonably incident to a lawful arrest, it follows that unless the arrestee was himself a recent occupant of the vehicle, the Belton rule has no applicability.

Id. at 764. The district court stressed that Chimel's justification was to deter an attempt made by the arrestee to remove any weapons that might aid in an escape, as well as to prevent the concealment or destruction of evidentiary items. Because the district court did not find the facts to be analogous to Belton, in that the timeliness was lacking, the court then shifted its focus to the concerns of officer safety and evidence preservation, which the court held could not be present at a time so far removed, and accordingly ruled the search was invalid. Again, when the foundation of Belton is extended beyond its original parameters, the bright-line rule is not automatically invoked.

The issue for us to decide in the present case is whether Belton extends to a situation where the first contact the defendant has with the officer occurs after exiting the vehicle. We find the recent analysis of the Sixth Circuit Court of Appeals in United States v. Hudgins, 52 F.3d 115, 119 (6th Cir. 1995), persuasive:

> The search of an automobile is generally reasonable even if the defendant has already been removed from the automobile to be searched and is under the control of the officer.
>
> Where the officer initiates contact with the defendant, either by actually confronting the defendant or by signaling confrontation with the defendant, while the defendant is still in the automobile, and the officer subsequently arrests the defendant (regardless of whether the defendant has been removed from or has exited the automobile), a subsequent search of the automobile's passenger compartments falls within the scope of Belton and will be upheld as

> reasonable. See United States v. Strahan, 984 F.2d 155, 156 (6th Cir. 1993). . . . Our decisions have consistently upheld the search of the passenger compartment of an automobile when the officer initiated contact with the defendant while the defendant was still within the automobile later searched, regardless of whether the defendant was arrested while actually occupying the automobile or after having recently been removed from the automobile. See United States v. Thomas, 11 F.3d 620, 628 (6th Cir. 1993); United States v. Patterson, 993 F.2d 121, 122-23 (6th Cir. 1993) (per curiam); [United States v.] White, 871 F. 2d [41], 44 [(6th Cir. 1989)]; United States v. Hatfield, 815 F.2d 1068, 1071-72 (6th Cir. 1987). However, where the defendant has voluntarily exited the automobile and begun walking away from the automobile before the officer has initiated contact with him, the case does not fall within Belton's bright-line rule, and a case-by-case analysis of the reasonableness of the search under Chimel becomes necessary. See Strahan, 984 F.2d at 159 (stating that Belton was inapplicable and concluding that the search was unreasonable under Chimel).

(Emphasis added; citations omitted.)

We must caution, however, that in adopting this rationale, this Court is mindful that the arrest and subsequent search should not be invalidated merely because the defendant is outside of the automobile. The occupants of a vehicle cannot avoid the consequences of Belton merely by stepping outside of

the vehicle as the officers approach. See United States v. Mans, 999 F.2d 966, 968-69 (6th Cir. 1993) (upholding Belton search where officer's first verbal contact with defendant was when defendant was outside the car on ground that officer had initiated contact with defendant earlier when defendant knew he was being followed by officer); State v. McLendon, 490 So. 2d 1308, 1309 (Fla. 1st DCA 1986) (highlighting the fact that "[t]o distinguish between arrests of persons in the car from arrests of persons recently vacating the car serves to severely diminish the purpose of the Belton decision").

In conclusion, we hold that Belton's bright-line rule is limited to situations where the law enforcement officer initiates contact with the defendant, either by actually confronting the defendant or by signaling confrontation with the defendant, and the officer subsequently arrests the defendant regardless of whether the defendant has been removed from or has exited the automobile. Applying the aforementioned analysis to the present situation, the record is clear that the defendant did not exit the vehicle upon the direction of the law enforcement officer. Because Belton does not apply, the trial court must determine whether the factors in Chimel justify the search of Thomas's vehicle. See Hudgins, 52 F. 3d at 199 (concluding that where Belton is inapplicable, then "a case-by-case analysis of the reasonableness of the search under Chimel becomes necessary"). Based on the record in front of us, we are unable to ascertain whether Officer Maney's safety was endangered or whether the preservation of the evidence was in jeopardy. Under our interpretation, these findings are critical to a determination of the outcome, and therefore we quash the decision under review and remand for further proceedings consistent with this opinion.

It is so ordered.

SHAW, ANSTEAD, PARIENTE and LEWIS, JJ., concur.

WELLS, J., concurs in part and dissents in part with an opinion.

QUINCE, J., recused.

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION, AND IF FILED, DETERMINED.

WELLS, J., concurring in part and dissenting in part.

I concur in the result in this case because I believe that the United States Supreme Court decision in Knowles v. Iowa, 525 U.S. 113 (1998), is a Supreme Court application of the Fourth Amendment to the United States Constitution that is sufficiently analogous to control the specific facts here. In this case there was no reasonable basis related to the vehicle to search Thomas; nor was there an arrest made related to the vehicle.

However, I dissent from the dicta which places serious limitations on New York v. Belton, 453 U.S. 454 (1981), that are not within the United States Supreme Court's decision. Pursuant to article I, section 12, we are bound by interpretations in respect to the Fourth Amendment by the United States Supreme Court. In Belton, the court held only that "when a policeman has made a lawful custodial arrest of the occupant of an automobile, he may, as a contemporaneous incident of that arrest, search the passenger compartment of that automobile." Id. at 460. Belton does not add as a condition "where the law enforcement officer initiates contact with the defendant either by actually confronting the defendant or signaling confrontation with the defendant." The reason for this bright-line rule is officer safety, which is equally as much

a concern whether the officer initiates the contact, actually confronts the person, or the person voluntarily exits the vehicle as long as the connection with the vehicle is proximate to the arrest.

Application for Review of the Decision of the District Court of Appeal - Certified Direct Conflict of Decisions

Second District - Case No. 97-03576

(Polk County)

James Marion Moorman, Public Defender, and Cynthia J. Dodge, Assistant Public Defender, Tenth Judicial Circuit, Bartow, Florida,

for Petitioner

Robert A. Butterworth, Attorney General, Robert J. Krauss, Senior Assistant Attorney General, and John W. Klawikofsky, Assistant Attorney General, Tampa, Florida,

for Respondent

SUPREME COURT OF FLORIDA

THURSDAY, JUNE 8, 2000

ROBERT A. THOMAS,	*	
	*	
Petitioner,	*	CASE NO. SC93070
	*	
v.	*	
	*	
STATE OF FLORIDA,	*	
	*	
Respondent.	*	
	*	
* * * * * * * * * * * * * * * * *		

In light of the revised opinion, the Petitioner's Motion for Rehearing is denied.

HARDING, C.J., and SHAW, ANSTEAD, PARIENTE and LEWIS, JJ., concur.

QUINCE, J., recused.

The Respondent's Motion for Rehearing denied.

HARDING, C.J., and SHAW, ANSTEAD, PARIENTE and LEWIS, JJ., concur.

WELLS, J., dissents

QUINCE, J. recused.

A True Copy JB

TEST:

Thomas D. Hall
Clerk, Supreme Court

cc: Hon. James Brikhold, Clerk
Hon. Richard M. Weiss, Clerk
Hon. Robert E. Pyle, Judge
Cynthia J. Dodge
Robert J. Krauss
John M. Klawikofsky

NOT FINAL UNTIL TIME EXPIRES TO FILE
REHEARING MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

STATE OF FLORIDA,	)	
	)	
Appellant,	)	
	)	
v.	)	Case No. 97-03576
	)	
ROBERT A. THOMAS,	)	
	)	
Appellee.	)	
	)	

Opinion filed May 15, 1998.

Appeal from the Circuit Court
for Polk County;
Robert E. Pyle, Judge.

Robert A. Butterworth, Attorney
General, Tallahassee, and Patricia E.
Davenport, Assistant Attorney General,
Tampa, for Appellant.

James Marion Mooreman, Public Defender,
Bartow, and Cynthia J. Dodge,
Assistant Public Defender, Bartow,
for Appellee.

PARKER, Chief Judge.

The State appeals the final order granting Robert A. Thomas's motion to suppress methamphetamine and drug paraphernalia obtained as a result of a search of Thomas's car incident to an arrest on an outstanding warrant. We reverse based upon New York v. Belton, 453 U.S. 454 (1981).

The following evidence was adduced at the hearing on the motion to suppress. Detective Maney was sent to the residence of Mr. and Mrs. Crall on information that marijuana was being sold from the residence. Maney knocked on the door, talked to the owners of the residence, and obtained consent to search the residence. Upon arrival, Maney had no intent to make an arrest. After Maney located marijuana inside the residence, the narcotics detectives arrived.

While the detectives were still in the residence, Maney sat outside the residence in his patrol car. Maney observed Thomas drive up to the house, park his car in the driveway, and get out. As Thomas walked toward the rear of the car, Maney got out of his vehicle and met Thomas at the rear of Thomas's car. Maney asked Thomas his name and whether he had a driver's license. Maney made the request because Thomas was in the driveway of a residence where arrests were being made for narcotic offenses. At that time, Maney had no idea that there were narcotics in Thomas's car.

A check of Thomas's driver's license reflected an outstanding warrant. Maney arrested Thomas and took him inside the Crall residence. Maney then went back outside and searched the car incident to Thomas's arrest. As soon as Maney opened the driver's door of the car, he found a baggie with some type of white residue. Maney also found three small bags of a white substance in the glove box. All of the baggies

tested positive for methamphetamine. Five minutes elapsed between the time that Thomas exited his car until Maney searched the car.

Following a hearing, the trial court granted the motion to suppress based on State v. Howard, 538 So. 2d 1279 (Fla. 5th DCA 1989). The trial court concluded that where an individual has exited a vehicle and subsequently is arrested on an outstanding warrant, a search of the vehicle is unlawful. We conclude that this finding was error.

The law is well settled that when a law enforcement officer has made a lawful custodial arrest of the occupant of an automobile that an officer may, incident to the arrest, search the passenger compartment of that vehicle. See Belton, 453 U.S. at 460. This court consistently has applied the rule contained in Belton recognizing that a court may not determine on a case-by-case basis whether the interior of an automobile is within the scope of a search incident to an arrest. See Chapas v. State, 404 So. 2d 1102 (Fla. 2d DCA 1981); see also State v. Smith, 662 So. 2d 725 (Fla. 2d DCA 1995).

There does not have to be a nexus between the arrest of the occupant of a vehicle and the subsequent search of that vehicle. Moreover, a defendant does not have to be in the vehicle at the time of the arrest and subsequent search in order for the search to be valid under Belton. See State v. McLendon, 490 So. 2d 1308, 1309 (Fla. 1st DCA 1986) (court will not "distinguish between arrests of persons in the car from arrests of persons recently vacating the car . . . ."). As noted by the court in State v. Johnson, 696 So. 2d 880 (Fla. 5th DCA 1997), the occupant of a vehicle cannot avoid the consequence of the Belton rule merely by stepping outside the automobile as officers approach. The circumstances in this case clearly fall within the Belton rule.

In this case, the trial court relied on Howard, 538 So. 2d 1279. In Howard, the police officer knew that there was an outstanding warrant for the defendant and followed the defendant's vehicle. The defendant stopped at a convenience store and exited his vehicle. At that time, he saw the officer and immediately placed the pouch that he was carrying back into his vehicle and locked the vehicle. The police officer approached the defendant and placed him under arrest. The officer refused to let the defendant's brother, who had just arrived, take the defendant's car keys. A search of the defendant's vehicle revealed contraband. The Fifth District Court, citing State v. Bennett, 516 So. 2d 964 (Fla. 5th DCA 1987), concluded that the search of the defendant's vehicle was not a search incident to a valid arrest. See Howard, 538 So. 2d at 1280.

The trial court's reliance on Howard is misplaced. In a more recent Fifth District Court decision, State v. Saufley, 574 So. 2d 1207 (Fla. 5th DCA 1991), the Fifth District upheld the search of a vehicle incident to an arrest. The defendant was observed driving in an erratic manner. After the defendant stopped and exited the vehicle, he appeared to have difficulty maintaining his balance and exuded the strong smell of alcohol. The defendant was arrested for driving under the influence. When the officer placed him in the patrol car, the defendant's girlfriend accosted the officer. Two or three minutes elapsed before the officer finally was able to search the vehicle at which time he found cannabis. See id. at 1209.

The defendant argued that because he was arrested after he was outside the vehicle, the search was not incident to the arrest. The Fifth District Court disagreed, applying Belton. See id. Furthermore, the court noted that the defendant's reliance on Bennett was misplaced because the court had held in Bennett that an arrest which was a pretext to carrying out a

preplanned, warrantless search of a vehicle could not validate the subsequent search. See id.

We can think of few incidents where a driver will not be out of the vehicle when an arrest is made. Therefore, as long as the arrest is not under a preplanned pretext to conduct a warrantless search of the driver, we conclude that the bright line test in Belton applies. Thomas's arrest was not a pretext to carry out a preplanned warrantless search of his vehicle. The officer did not follow Thomas to the Crall residence because the officer knew of an outstanding warrant for his arrest, nor was Thomas under surveillance which provided the officer with an opportune time to effect his arrest.

Accordingly, the trial court erred in suppressing the evidence obtained during a lawful search incident to an arrest. The order is reversed.

CAMPBELL and QUINCE, JJ., Concur.